

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0080 CSET
Controlled Substance Excise Tax – Imposition
For Tax Period: 1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax — Imposition

Authority: IC 6-7-3-5; IC 35-48-4-11; IC 6-8.1-5-1

Taxpayer protests the imposition of Indiana's controlled substance excise tax.

STATEMENT OF FACTS

In the course of an ongoing narcotics investigation, on August 1, 1992, police obtained a warrant to search taxpayer's residence. During the search, police discovered and seized a quantity of marijuana. As a result, on September 28, 1992, police arrested taxpayer for possession of marijuana with intent to deliver. Following taxpayer's arrest, the Department assessed Indiana's controlled substance excise tax against taxpayer on 13,830 grams of marijuana. At the statutory rate of \$40.00 per gram, the base tax deficiency amounted to \$553,200.00. With the addition of the statutory 100% penalty, taxpayer's total liability came to \$1,106,400.00. Taxpayer protests this assessment.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

This protest would be sustained if taxpayer could show either (1) he did not possess the marijuana upon which the assessment was made, or (2) jeopardy had attached prior to the

Department's assessment. The facts in possession of the Department support neither showing. And at hearing, taxpayer failed to present any evidence or legal arguments contesting the validity of this assessment.

IC 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C 841 through 21 U.S.C. 852. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3.

Possession of marijuana is defined in IC 35-48-4-11:

Section 11. A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;

commits possession of marijuana , hash oil, or hashish, a Class A misdemeanor.

Pursuant to IC 6-8.1-5-1, the notice of proposed assessment is prima facie evidence that the Department's claim is valid. The burden of providing information rebutting this assessment rests with the taxpayer. In this instance, taxpayer has failed to meet his burden of proof.

FINDING

Taxpayer's protest is denied.